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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~975~~ 117

WESLEY WENDELL WEST,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

WESLEY WENDELL WEST,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States (1959 Pocket Supp.), moves that the judgment and order of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, rendered and entered on the 4th day of December, 1959 (rehearing thereon was denied the 14th day of December 1959), be affirmed, and/or that the appeal taken therefrom to the above entitled court be dismissed.

The said motion to affirm the judgment or dismiss this appeal is made upon the following grounds:

(1) That the appeal herein does not present a substantial federal question;

(2) That the judgment and order rest on an adequate non-federal basis.

The Question Presented.

The appellant was charged and convicted upon a misdemeanor complaint filed in the Municipal Court of the Los Cerritos Judicial District, County of Los Angeles, State of California, upon a violation of section 531 of the Vehicle Code of the State of California.

Said section 531 of the California Vehicle Code read, at the time of the offense, as follows:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway." (Statutes 1923, Chapter 266, Sec. 27, p. 558. This section is section 21703 in the new California Vehicle Code, effective September 25, 1959, verbatim.)

Appellant contends that the said statute is phrased in such vague, uncertain and indefinite terms as to fail to provide an ascertainable standard of guilt or innocence and is not supported by any other clarifying or guiding statute or other law providing for such an ascertainable standard of guilt or innocence.

On page 13 of appellant's jurisdictional statement is the following assertion:

> "Therefore, the fundamental question to be determined in this case is whether the standard of 'reasonable and prudent' is a sufficiently clear, definite, and certain standard, without further explanation, qualification or amplification, to form the basis for any penal law."

This assertion is, therefore, the crux of appellants petition.

I.

No Substantial Federal Question Is Presented by This Appeal.

(A) The Modern Trend in Criminal Statutes Is a "Rule of Reason".

The general rules as to the sufficiency of the statement of a statutory crime are well understood. In 14 Am. Jur. "Criminal Law," Sec. 19, pages 773-774 is the statement:

> "The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen *with reasonable precision* what acts it intends to prohibit, so that he may have an understandable rule of conduct, and to know what acts it is his duty to avoid. . . . Every uncertainty, however, which may exist in the operation of a criminal statute does not render it void." (Citing *Pacific Coast Dairy v. Police Court*, 214 Cal. 668, 8 P. 2d 140, 80 A. L. R. 1217.) (Emphasis added.)

It is a recognized rule of construction as stated in *Ex parte Frye*, 143 Tex. Cr. R. 9, 156 S. W. 2d 531, 533:

> "Every presumption is in favor of the constitutionality of an act of the legislative body of a state and the courts will not declare it invalid unless, in their judgment, it clearly and unmistakably comes within the inhibition of the Constitution." (*Cooley's Const. Lim.*, 8th Ed., Vol. 1, page 371; *Graves v. Minn.*, 272 U. S. 425, 47 S. Ct. 122, 71 L. Ed. 331, and other cases cited.)

In *Lorensen v. Superior Court*, 35 Cal. 2d 49 [216 P. 2d 859], defendant and others were charged with conspiracy to commit certain named crimes and "to pervert

and obstruct justice or the due administration of the laws." On denying a contention that the quoted part was void for uncertainty and ambiguity, the court states:

> "To comply with the constitutional requirement of due process of law the crime for which a defendant is being prosecuted must be clearly defined. It is only necessary that the words used in the statute be well enough known to enable those persons within its reach to understand and correctly apply then. 'To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.'"

Vehicle laws are particularly subject to questions on the matter of vagueness, but have been universally upheld, so long as there is a basic condition in the statute for ascertaining the circumstances surrounding the occasion where it is applied. In *State v. Coppes* (1956), 78 N. W. 2d 10, 247 Iowa 1057, Anno. 26 A. L. R. 901, 29 A. L. R. 1066, numerous cases similar to the one involved in the instant case are analyzed. In the *Coppes* case the court was testing section 321.285 of the Iowa Code, providing vehicle speed restrictions using the following expression (in part): "Any person driving a motor vehicle on a highway shall drive the same at a *careful and prudent speed* not greater than nor less than is *reasonable and proper*, having due regard to the traffic, surface and width of the highway and of *any other conditions* then existing. . . ." (Emphasis added to this and succeeding quotations.)

Expressions of the problem of striking at the evil sought to be remedied in motor vehicle traffic laws are illustrated in the cases reviewed in the *Coppes* case. To cite ex-

amples: In *Commonwealth v. Pentz*, 247 Mass. 500, 143 N. E. 322, 324:

> "The court, in part said: 'By its terms, whoever upon any way operates a motor vehicle . . . *so that the lives or safety of the public might be endangered* is made subject to punishment. The operation of an automobile upon a way is a clearly defined act, susceptible of being easily understood. Its operation so as not to endanger the lives or safety of the public *is the description of a fact*. While it may not be easy to formulate in words a comprehensive definition of that fact applicable to all cases, it is not difficult to comprehend with some approach to accuracy the thought conveyed by the description of that fact."

In *State v. Ashton*, 175 Kan. 164, 262 P. 2d 123, 130, the statute related to the operation of an automobile on a public highway in *"negligent disregard of the safety of others resulting in the death of his passenger,"* the court states:

> "Manifestly, no legislature could accurately anticipate every possible circumstance or contingency which might arise and legislate specifically concerning it. That would be true concerning speed and all other factors which might become involved in highly dissimilar situations. Some offenses admit of much greater precision and definiteness than others and where possible statutes always should be framed with reasonable certainty. *Reasonable and not mathematical certainty is what the law requires. It appears the instant statute is about as definite and certain as the subject matter, the evil sought to be remedied, permits. This is the real test.* Under such circum-

stances a police measure enacted for the safety of the public will not be nullified on the ground of constitutional invalidity."

The *Coppes* case (*supra*), sustaining the regulation as above stated, was approved in *Sate v. Holling* (Iowa), 78 N. W. 2d 25 (July 1956), which overruled a constitutional attack upon the Iowa statute section 321.288 I. C. A., providing *"Control of Vehicle."* "The person operating a motor vehicle or motorcycle shall *have the same under cont. and shall* reduce the speed to a *reasonable and proper rate.* . . . ." The court uses the following language (78 N. W. 2d at page 26):

> "We agree with the statement in *Commonwealth v. Klick*, 164 Pa. Super. 449, 65 A. 2d 440, 442: 'The mandate of [the section] is a salutary police measure limiting the operation of motor vehicles, in the public interest. To define specifically permissible rates of speed under every conceivable condition would be manifestly impossible; hence the general language . . . is no valid objection to it on constitutional grounds."

In *People v. McMurchy*, 249 Mich. 147, 228 N. W. 723, 731, a statute was upheld which prohibited operation of any vehicle *"at an immoderate rate of speed or in a careless or reckless manner."* The determination of its violation was declared a question of fact for the jury. The following language is there used:

> "In 47 States of the Union and in the District of Columbia and Hawaii, there are statutes which forbid driving 'at a rate of speed greater than is *reasonable and proper*, having due regard for the width, traffic and use of the highway and in a manner so

> as to *endanger property or limb* of any person.' In some of the states the words *'careful and prudent'* are used. In others, words with a like meaning to those quoted are used."

For other cases, see *State v. Schaffer*, 96 Ohio St. 215, 117 N. E. 220, L. R. A. 1918B, 945; *Seegman v. Dist. of Columbia* (D. C. Mun. App.), 48 A. 2d 764; *State v. Magaha*, 182 Md. 122, 32 A. 2d 477; *Gallagher v. State*, 193 Ind. 629, 141 N. E. 347, 29 A. L. R. 1059.

In *State v. Wojahn* (1955), 204 Ore. 84, 282 P. 2d 675, the court sustained against the contention of vagueness the Oregon statute in which the terms used were that the accused "drove in a negligent manner" and "without due caution and circumspection." After stating that the speed of motor vehicles is regulated by the basic law, in O. R. S. 483.102, which states the rule that "no person shall drive a vehicle upon a highway at a speed greater than is *reasonable and prudent*, having due regard to the traffic, surface and width of the highway, *the hazard at intersections and any other conditions then existing.*" (2) nor at a speed which is greater than "will permit the driver to *exercise proper control* of the vehicle and to decrease speed or to stop *as may be necessary to avoid colliding* with any person, vehicle or other conveyance. . . ."

We find the following rule set out in *Lockheed Aircraft Corp. v. Superior Court* (1946), 28 Cal. 2d 481, 484 (171 P. 2d 21, 166 A. L. R. 701):

> "All presumptions and intendments favor the validity of a statute. . . . It must be upheld unless its nullity clearly, positively and unmistakably appears."

(B) The California Statute Here Involved Meets the Requirement of Certainty as Required Under Modern Authorities.

It should be noted that the California Vehicle Code section 531 contains necessary standards and controls of the term "reasonable and prudent," wherein it is stated:

> "having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway."

Attention is also called to the fact that the section has been part of the law of the highways of California since long before the 1923 Vehicle Code.

In *Ex parte Daniels* (1920), 183 Cal. 636 (92 Pac. 442, 21 A. L. R. 1172), the Supreme Court stated at page 646 as follows:

> "We conclude, then, that section 22(d) of the Motor Vehicle Act of 1919 evidences an intent on the part of the legislature that the restriction that the speed cannot be *unreasonable and unsafe* shall be the test of the legality of the speed at any place within the state, and that this involves the right to have that question determined by a jury rather than by a local legislative body. We have so far assumed that the state law prohibiting an unreasonable speed is not too uncertain to be a valid criminal statute. . . . We will not undertake to review the authorities cited on this subject, but will call attention only to those which in our judgment clearly establish the validity of such legislation. In this connection it may be stated that there has been a tendency to a much more liberal construction of such statutes in the more recent decisions. In the *Standard Oil* case, 221 U. S.

1 [55 L. Ed. 619, 34 L. R. A. (N. S.) 834, 31 Sup. Ct. Rep. 502; see also Rose's U. S. notes], the Supreme Court of the United States, in interpreting the anti-trust law, adopted what has been characterized as the 'Rule of Reason,' holding that this law 'really was not a denial of all restraint of trade, but only a denial of an unreasonable restraint of trade,' thus leaving to courts and juries the determination of what restraints of trade were unreasonable." (Cites *People v. Pearne,* 118 Cal. 154 [50 Pac. 376].)

The test of reasonableness in Vehicle Code section 531 is supplied within the wording of the code. In *People v. Dickenson* (1959), 343 P. 2d 800, 171 Cal. App. 2d Supp. 872, at 875, is the statement:

> "It cannot be properly said that the mere fact that an enactment is based upon the test of reasonableness renders the enactment vague or uncertain or invalid so long as there is prescribed a test to be applied to determine that reasonableness. For example, the requirement of the California Vehicle Code, Section 510, setting forth the basic speed law is based entirely upon reasonableness, but it is prescribed that the speed must be reasonable *in view of certain things to be taken into consideration. This requirement has been uniformly upheld.*" (Emphasis has been added.)

The test in the *Dickenson* case was that the premises be so arranged as to permit a reasonable inspection as required. "It is the opinion of this court that the ordinance thereby lays down the test for reasonableness."

The test under the Vehicle Code section 531 involved in the instant case, has been clearly set forth in the enactment. In the *Coppes* case (*supra*), 78 N. W. 2d 10,

the enactment used the phrase "at a careful and prudent speed" having due regard, etc. In *Gallagher v. State* (*supra*), 141 N. E. 347, the phrase used in the statute was "at a speed greater than is reasonable or prudent *having regard to the traffic and use.* . . ."

In the *Cuppes* case, 78 N. W. 2d 10, 24, the court concludes:

> "This statute is directed primarily to the operators of motor vehicles on public highways. Such persons must obtain licenses before they can lawfully become such operators, and to entitle them to such licenses must show their ability to properly operate motor vehicles and an adequate knowledge of the laws of the road. . . . They know or should know what speed is proper and reasonable under different traffic conditions. They will have no difficulty in understanding the provisions of Section 321.285 and will know when they are violating them. . . ."

California has strict examinations and licensing regulations for vehicle drivers.

The applicability of Vehicle Code, Section 531 was the basis of the appeal in *Landrum v. Severin* (1951), 37 Cal. 2d 24, 230 P. 2d 337. The jury was there instructed:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and condition of, the roadway."

In said case (37 Cal. 2d at 25) we find the following statements:

> "The statute fixes a rule of conduct for a driver following another automobile."

The court states at 37 Cal. 2d 26-27:

> "It was for the jury to determine whether, *considering all of these circumstances,* Landrum was driving his car at a distance behind the one ahead of him which was less than was reasonable and prudent. The space between vehicles may be such that, as a matter of law, there was or was not a violation of the statute. . . . By the instruction challenged in the present case, the question as to Landrum's conduct properly was left to the jury. In view of all of the circumstances, it cannot be said that there is insufficient evidence to support the implied finding of a violation of the quoted section." (Emphasis added.) Principle followed in *Clinkscale v. Carmershausen* (1956), 145 Cal. App. 2d 76, 81 [302 P. 2d 23].

In 5-A Am. Jur. "Automobiles," Section 38, page 246, it is stated:

> "It is generally held, however, that statutes or ordinances providing that no person shall operate or drive any motor vehicle recklessly or at a rate of speed greater than is reasonable or proper, having regard to the width, traffic and use of the highways, and the general and usual rules of the road, or so as to endanger the property, life, or limb of any person, are not invalid on the ground that they are too vague, uncertain, and indefinite to sustain a criminal conviction."

Again, we find in 5-A Am. Jur., Section 347, page 443, the following rule and citations:

> "A violation of a statute providing that the driver of a motor vehicle shall *not follow* another vehicle

more closely than is reasonable and prudent, with regard for the safety of others and regard to the speed of such vehicles and the traffic upon and conditions of the highway has been held to constitute negligence per se, and if injury proximately results therefrom, it is actionable." (*Murray v. Atlantic Coast Line R. Co.*, 11 S. E. 2d 326, 218 N. C. 392; *Tarrant v. Pepsi-Cola Bottling Co.*, 20 S. E. 2d 565, 221 N. C. 390.)

California cases have followed the general rules adverted to above. In *Giles v. Happely* (1954), 123 Cal. App. 2d 894, 899-900 [267 P. 2d 1051], we find this statement:

"Clearly, this proposition [violation of Vehicle Code sec. 531] is not meritorious. It was a question of fact from the evidence for the jury to determine whether or not defendant Happely was following unreasonably close to the car in front of him. We cannot say that 18 feet, which Mrs. Happely testified was the distance their car was from the car in front of them, was under the circumstances a reasonable interval to allow between cars."

In *Driver v. Norman* (1951), 106 Cal. App. 2d 725, 728 [236 Pac. 246], it is stated:

"Assuming his speed to have been approximately 25 miles per hour—slightly over 36 feet per second—such testimony is in accord with the normal reaction time of three-fourths, second required from the time a person sees danger until he can get his foot on the brake.

The question of appellant's negligence in following the Cadillac too closely was also for the trier

of fact. (*Elford v. Hiltabrand*, 63 Cal. App. 2d 65, 74 [146 P. 2d 510]; *Donahue v. Mazzoli*, 27 Cal. App. 2d 102, 106 [80 P. 2d 743].)"

In *Kelley v. Hodge Transportation System* (1925), 197 Cal. 598, 607 [242 P. 2d 76], we find the statement:

"The court at considerable length instructed the jury as to the meaning of the terms 'a man of ordinary prudence,' and 'ordinarily prudent person' and a 'reasonable man.' Those terms, like the term 'reasonable doubt' are easily understood, but are difficult to define." (*Cf. Clinkscale v. Germershausen* (1956), 145 Cal. App. 2d 76, 81 [302 P. 2d 23]; *Jacob v. Key System Transit Lines* (1956), 140 Cal. App. 2d 357 [295 P. 2d 569]; *Karageozian v. Lost*, 139 Cal. App. 2d 874, 877 [294 P. 2d 778]; 6 Cal. Jur. 2d, Section 139, p. 600.)

As stated in *Snyder v. Massachusetts* (1933), 291 U. S. 97, 116, 122 (54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575):

"Due process of law requires that the proceedings shall be fair, but fairness is a relative, not absolute concept. It is fairness with reference to particular conditions or particular results. . . . But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament."

In *Roth v. United States* (1956), 354 U. S. 476, 491 (1 L. Ed. 2d 1498), in discussing the California and Federal obscenity statutes, the opinion states:

"'[T]he Constitution does not require impossible standards'; all that is required is that the language

'convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.' . . .

"'That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold language too ambiguous to define a criminal offense.'"

Other California cases interpreting words of common experience may be mentioned. *People v. Kiser* (1952), 112 Cal. App. 2d Supp. 903 [245 P. 2d 1125] ("able" and "effective" and "minimize"); *Smith v. Peterson* (1955), 131 Cal. App. 2d 241, 250 [280 P. 2d 522] ("excessive" and "unusual"); *Ex parte Daniels* (1920), 183 Cal. 636, 647 [192 P. 2d 442] (California basic Vehicle Code Speed Law, Section 510, "No person shall drive a vehicle upon a highway at a speed greater than is *reasonble or prudent* having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which *endangers the safety of persons or property*"). In *Yanke v. State Department Public Health* (1958), 162 Cal. App. 2d 600, 605 [328 P. 2d 556], it was held that the word "'adequate' is not so uncertain as to render a penal statute invalid."

As stated in *People v. Darby* (1952), 114 Cal. App. 2d 412 [250 P. 2d 353], to make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.

It would seem that such a statute, which has found validity and favor over the period of the automobile age in forty-eight states and the District of Columbia, does not raise a substantial Federal question.

II.

No Other Points Are Presented.

Appellant in his jurisdictional statement has presented only the contention herein discussed, and which he designates as the fundamental question to be determined, that is, "whether the standard of 'reasonable and prudent' is a sufficiently clear, definite and certain standard" (p. 13 of said statement).

III.

The Judgment and Order Herein Rest on an Adequate Non-Federal Basis.

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which constitutes the final court of appeal from the Municipal Court judgment of conviction and order denying motion for a new trial, rendered its judgment in the instant case without a written opinion.

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 547-549 the following statement is found:

> 'Where the highest court of the State delivers no opinion and it appears that the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment." (Citing numerous cases.)

The record in the instant case presents the identical consideration, as the record shows that the State appeal raised various non-federal grounds upon which the appellate judgment may have rested.

Conclusion.

To all intents and purposes this appeal reduces to the proposition that section 531, California Vehicle Code, violates due process, not by reason of the vagueness of the wording used, as these terms have been ruled acceptable as used in the basic speed laws, but by reason of an absence of an ascertainable standard in the case of section 531. Two clear answers to this contention are: (1) Both sections 510 and 531, are parts of the same code and statutes are considered as a single statute in matters of interpretation and construction. (*People v. Darby* (1952), 114 Cal. App. 2d 412 [250 P. 2d 353], *supra.*)

Appellant in his opening brief in the State court appeal, page 6, raised the question of the constitutionality of section 531, Vehicle Code, but in the same breath stated that he was well aware that section 510 thereof (basic speed law, using the terms reasonable and prudent, as discussed above) was held constitutional, and was not vague or indefinite, but contends that the use of the same terms in section 531 of said code, are distinguishable, as not containing the same standard. In this connection, appellant has overlooked the terms used in both section 510 and section 531 of said code,—following the words: "Reasonable or prudent," which read "having due regard for the traffic on, and the surface and width of, the highway" in section 510, and the words "having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway,' in section 531 thereof. If the one phrase meets constitutional standards, clearly the other phrase qualifies.

(2) Section 531 contains within itself a recognized standard to be applied. See *People v. Dickenson* (1959),

343 P. 2d 800, 171 Cal. App. 2d Supp. 872 (*supra*), and cases cited herein.

It is respectfully submitted that no substantial Federal question is presented by this appeal: that the decision appealed from might have rested upon adequate non-federal grounds and that for these reasons the judgment and order appealed from should be affirmed and the appeal therefrom should be dismissed.

Respectfully submitted,

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